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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

CYRUS YONAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing the dismissal of one count of a multi-count indictment because it failed to state a federal offense.

On March 21, 1984, petitioner was indicted by a grand jury in the United States District Court for the Northern District of Illinois. He was charged with operating the affairs of his law practice through a pattern of racketeering activity by bribing an Assistant State's Attorney to influence the disposition of criminal cases, in violation of 18 U.S.C. 1962(c). On July 17, 1985, petitioner was charged in a superseding indictment that added eight counts of mail fraud, in violation of 18 U.S.C. 1341, and one count of receiving income derived from a pattern of racketeering activity, in violation of 18 U.S.C. 1962(a).

On November 15, 1985, the district court dismissed the initial racketeering count in part on the ground that petitioner was a sole proprietor, and that a sole proprietor could not be employed by or associated with himself. In the meantime, on November 13, 1985, petitioner was charged in another superseding indictment that added the charge that petitioner associated with another enterprise—the State's Attorney's Office—and that he had participated in

its affairs through a pattern of racketeering activity by paying seven bribes to prosecutors, in violation of 18 U.S.C. 1962(c).

On December 2, 1985, the district court dismissed the count alleging the State's Attorney's Office as the racketeering enterprise. The court held that petitioner could not be "associated" with the State's Attorney's Office, because he allegedly had committed crimes against that office. The court also dismissed the sole proprietorship racketeering count for "precisely the same reasons" that it had dismissed that count previously (Pet. App. 1a-22a). On September 2, 1986, the court of appeals reversed the dismissal of the count relating to the State's Attorney's Office and affirmed the dismissal of the sole proprietorship count (*id.* at 1c-19c). The court of appeals held that the relationship between the State's Attorney's business in prosecuting criminal defendants and petitioner's business in representing criminal defendants was sufficient for petitioner to be associated with the State's Attorney's Office for purposes of 18 U.S.C. 1962(c). The court further concluded that the seven alleged acts of bribery were sufficient to charge petitioner with participating in the affairs of the State's Attorney's Office through a pattern of racketeering activity (Pet. App. 11c-18c). The court ruled that the sole proprietorship count was barred on res judicata grounds (*id.* at 9c-11c).

Petitioner contends (Pet. 11-29) that 18 U.S.C. 1962(c) cannot apply to a private attorney's bribe payments to prosecutors, because the private attorney does not become "associated with" the prosecutor's office by paying bribes to its employees. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decison places petitioner in precisely the same position he would have occupied if the district court had denied his motion to dismiss. If petitioner is acquitted following a trial on the merits, his con-

tentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of the final judgment against him. Accordingly, review of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

DECEMBER 1986

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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